

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 24, 2010

In the Matter of P. N. HAACK, Minor.

No. 294901
Kent Circuit Court
Family Division
LC No. 08-053131-NA

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent Robert Joe Haack appeals as of right from the trial court order terminating his parental rights to the minor child.¹ We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The minor child was removed from her mother's care at birth. At the time, Haack was on parole and was participating in intensive outpatient treatment for substance abuse. The trial court granted custody to Haack on the condition that he remain drug free. DHS provided services additional to those provided as part of Haack's parole, including a parent-agency agreement, a Families First social worker, an Advanced Impact Therapist, referrals to parenting classes, substance abuse and mental health assessments, and substance abuse and mental health treatment. However, because Haack consistently failed his drug tests, the child was removed from his custody three months later. Haack continued to abuse drugs, lost his apartment, and moved back in with his mother. He was later jailed for repeated parole violations, because remaining clean and sober was a condition of his parole. Haack's testimony at the parental rights termination hearing established that he was likely to be sent back to prison for some time.

After the termination hearing, the trial court found that DHS established that termination was warranted under MCL 712A.19b(3)(g). The trial court also found that termination of Haack's parental rights was in the child's best interests. The trial court opined that Haack had given no indication that he could take care of his own problems, and therefore none that he would be able to handle the child's special needs. The trial court also held that DHS made reasonable efforts to finalize a permanency plan for the child.

¹ MCL 712A.19b(3)(g) (failure to provide proper care and custody).

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Haack argues that the trial court clearly erred in terminating his parental rights because the statutory ground for termination was not established by clear and convincing evidence. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁴ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. ANALYSIS

MCL 712A.19b(3)(g) provides that a trial court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." In order to provide "proper care and custody," a parent must be able to provide a proper home, sufficient food, clothing, and other physical and emotional necessities.⁶ A parent's failure to comply with the parent/agency agreement is evidence of a parent's failure to provide proper care and custody for the child.⁷

Haack is a long-term substance abuser who, despite everything he heard from the many professionals who tried to help him, refused to recognize and admit that drug addiction necessarily interferes with the ability to properly care for a child. He refused to accept that his child needed a father who was clean and sober. Haack proved that drugs were his first priority by continuing his drug use despite the trial court's clear warning that positive drug screens would result in the child being removed from his custody. Further, by the time of the termination hearing, Haack was unable to provide even for his own physical needs, much less the physical and emotional needs of a toddler with developmental delays. Because his drug addiction ultimately resulted in his imprisonment, he was completely unable to provide for *any* of his daughter's physical or emotional needs, even through visitation. Moreover, there could be no

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁶ *In re Harmon*, 140 Mich App 479, 483; 364 NW2d 354 (1985); *In re Boughan*, 127 Mich App 357, 364; 339 NW2d 181 (1983).

⁷ *JK*, 468 Mich at 214; *Trejo*, 462 Mich at 360-363, 361, n 16.

reasonable expectation that he would be able to provide for his daughter's basic necessities within a reasonable time. By his own admission, Haack was likely to remain incarcerated for some time upon sentencing.

We conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Haack's parental rights under MCL 712A.19b(3)(g).

III. REASONABLE EFFORTS

A. STANDARD OF REVIEW

Once the DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁸ However, a trial court is not required to terminate parental rights if DHS has not made reasonable efforts to reunify the child with the parents.⁹

Haack does not dispute that termination was in the minor child's best interest. Instead, Haack argues that the state failed to make reasonable efforts to reunify him with the child and that the termination of his parental rights violated due process. But this issue is not preserved because Haack failed to either object to the relevant rulings below or raise them in his statement of questions presented.¹⁰ This Court's review of this unpreserved constitutional issue is for plain error affecting substantial rights.¹¹

B. ANALYSIS

Specifically, Haack argues that DHS's delay in offering him substance abuse services was unreasonable and that the state violated his right to due process because DHS was just getting him started on his drug treatment plan 11 months after his daughter came into care. We disagree. Michigan statutory law, as well as DHS's policies and procedures, require the state to make "reasonable efforts" toward reunification.¹² Services are "reasonable" when they are sufficient to provide the trial court with the evidence that it needs in order to decide whether the parent, if provided with appropriate services, would be able to provide proper care and custody within a reasonable time considering the child's age.¹³ If the trial court clearly errs in holding that the state's efforts were reasonable, this Court will vacate the order terminating the

⁸ MCL 712A.19b(5); *Trejo*, 462 Mich at 350.

⁹ *In re Rood*, 483 Mich 73, 105; 763 NW2d 587 (2009), citing MCL 712A.19a(6)(c).

¹⁰ See *In re Hansen*, 285 Mich App 158, 164-165; 774 NW2d 698 (2009).

¹¹ *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

¹² MCL 712A.19a(2); *In re Rood*, 483 Mich at 99-100.

¹³ *Id.* at 115-118.

respondent's parental rights and remand the case for "reconsideration after [the] respondent has received an opportunity to demonstrate his ability and willingness to parent."¹⁴

Here, Haack received services that were more than adequate for the trial court to conclude that additional services would not result in his being able to provide proper care and custody within a reasonable time. Because he was on parole, Haack was already attending an intensive outpatient program for substance abuse treatment when the minor child was born. It is irrelevant that the referral for that treatment came from Haack's parole officer rather than from DHS's social worker. Due process does not require the state to provide double services.¹⁵ In any case, DHS began providing substantial additional services from the time Haack was granted custody a few weeks after his daughter's birth. He was referred to Families First almost immediately. Twelve days after the adjudication hearing, he began receiving services from an Advanced Impact Therapist, who worked with Haack twice weekly for months. Haack was also referred for a substance abuse assessment and a psychological evaluation, to Network 180 and then to Catholic Charities for mental health treatment, and to parenting classes. There was no point in offering further services after Haack was jailed for parole violations because he could no longer participate in services.

Haack does not specify how he would have recovered from his drug addiction had he received any specific drug addiction treatment sooner. Again, the state was already providing him with substance abuse treatment at the time his daughter was born. Even assuming that there was some bureaucratic delay in his receipt of some additional service, this fact would "in no way compel[] the conclusion that [DHS's] efforts toward reunification were not reasonable, and, more to the point, [would] not suggest that [Haack] would have fared better if the worker had offered those additional services to him."¹⁶

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck

¹⁴ See *id.* at 89 (quotation and citation omitted).

¹⁵ See *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008), citing MCL 712A.18f(1)(b).

¹⁶ *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).